

***United States Court of Appeals
for the Second Circuit***



**RESPONDENT'S
BRIEF**

No. 76-4256

76-4256

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Signed copy

WALTER M. JANCZAK,
PETITIONER

v.

F. RAY MARSHALL,
SECRETARY OF LABOR,
RESPONDENT

Petition for Review of the Secretary of
Labor's Determination Under Chapter 2,
Title II of the Trade Act of 1974

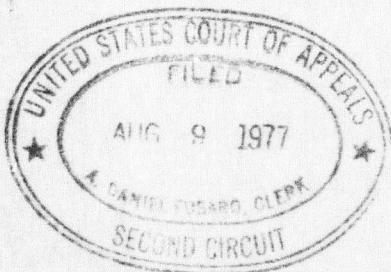
BRIEF FOR THE SECRETARY OF LABOR

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T A B L E O F C O N T E N T S

	Page
Statement of the case -----	1
Pertinent statutory provisions -----	6
Statement of the facts -----	14
Statement of the issue -----	16
Argument:	
This Court lacks jurisdiction over the issues of this action -----	16
The Secretary's interpretation of the Act should be given great weight -----	20
Conclusion -----	22
Appendix 1 - Trade Act Agreement for the State of New York	
Appendix 2 - Petition for Adjustment Assistance	
Appendix 3 - Notice of Investigation	
Appendix 4 - Notice of Determinations	
Appendix 5 - Petition for Reconsideration	
Appendix 6 - Denial of Petition for Reconsideration	

CITATIONS

Cases:

<u>Algoma Plywood and Veneer Company v.</u> <u>Wisconsin Employment Relations Board,</u> <u>336 U.S. 301</u> -----	21
<u>AFL v. NLRB</u> , 308 U.S. 401 -----	18, 20
<u>Brennan v. Southern Contractors</u> <u>Service</u> , 492 F. 2d 498 -----	22
<u>Fawcus Machine Co. v. United States,</u> <u>282 U.S. 375</u> -----	22
<u>Federal Power Commission v. Colorado</u> <u>Interstate Gas Co.</u> , 248 U.S. 492 -----	20
<u>Norwegian Nitrogen Products Co. v.</u> <u>United States</u> , 288 U.S. 294 -----	21

<u>Railway Express Agency v. Kennedy,</u> 189 F. 2d 801 -----	20
<u>Red Lion Broadcasting Co. v. FCC.</u> 395 U.S. 367 -----	22
<u>Udall v. Tallman,</u> 380 U.S. 1 -----	21, 22

Statutes:

Title II, Chapter 2 of the Trade Act of
1974 (19 U.S.C. 2271 et seq.; Pub. L.
93-618; 88 Stat. 2019):

Section 221 (19 U.S.C. 2271) -----	1, 6-7, 18
Section 221(a) (19 U.S.C. 2271(a)) -----	2, 6-7, 14
Section 222 (19 U.S.C. 2272) -----	2, 7, 14, 18
Section 223 (19 U.S.C. 2273) -----	2, 5, 8, 16, 18, 19, 20, 21, 23
Section 224 (19 U.S.C. 2274) -----	18
Section 231 (19 U.S.C. 2291) -----	4, 5, 6, 8-9, 18
Section 234 (19 U.S.C. 2294) -----	4, 6, 9, 20
Section 235 (19 U.S.C. 2295) -----	6, 9-10, 18
Section 236(a) (19 U.S.C. 2296(a)) -----	6, 10, 18
Section 237(a) (19 U.S.C. 2297(a)) -----	6, 10, 18
Section 238(a) (19 U.S.C. 2298(a)) -----	6, 10, 18
Section 239 (19 U.S.C. 2311) -----	3, 5, 11, 18, 19, 20
Section 247(1) (19 U.S.C. 2319(1)) -----	5, 12
Section 247(2) (19 U.S.C. 2319(2)) -----	5, 12, 17, 18, 19, 20, 22, 23
Section 247 (1)(B) (19 U.S.C. (1)(B)) -----	4
Section 248 (19 U.S.C. 2320) -----	13, 19
Section 250 (19 U.S.C. 2322) -----	3, 13, 16, 19, 22
Section 250(a) (19 U.S.C. 2322(a)) -----	13, 17, 19
Section 250(c) (19 U.S.C. 2322(c)) -----	3, 13

Trade Expansion of 1962 (19 U.S.C.
1801 et seq. (1970 ed.)):

19 U.S.C. 1978(1) (1970 ed.) ----- 22

19 U.S.C. 1978(2) (1970 ed.) ----- 22

New York Unemployment Insurance Law,
Art. 18, C. 31, Consolidated Laws of
New York:

Sections 500 et seq. ----- 4

Section 620.1(a) ----- 6

Section 621.1 ----- 6

Section 624 ----- 6

Miscellaneous:

29 CFR Part 90 ----- 14

29 CFR Part 91 ----- 14, 17

Part C of MA Handbook No. 315,
Adjustment Assistance for Workers
Under the Trade Act of 1974 ----- 14, 16, 17, 19

41 FR 42719-42721 ----- 2, 15

41 FR 42721 ----- 2, 21

Petitioner's Brief ----- 17

Secretary's Motion to Dismiss ----- 16

Memorandum of Points and Authorities in
Support of Secretary's Motion to Dismiss ---- 16

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BRIEF FOR THE SECRETARY OF LABOR

STATEMENT OF THE CASE

This case is before the Court on the petition of Walter M. Janczak (hereafter referred to as petitioner), requesting review of the Secretary of Labor's determination certifying in part and denying in part certification of eligibility to apply for worker adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended (19 U.S.C. 2271 et seq.; hereafter referred to as the Act). Pursuant to a petition for certification of eligibility to apply for worker adjustment assistance filed with the U.S. Department of Labor

on May 7, 1976, the Secretary of Labor (hereafter referred to as the Secretary) conducted Investigation No. TA-W-884 to determine whether increased imports of articles like or directly competitive with articles produced by the Lackawanna Plant of Bethlehem Steel Corporation (hereafter referred to as the Company) in Woodlawn, New York, contributed importantly to the separations of the workers from employment at the firm and to a decline in sales or production, in accordance with Sections 221(a) and 222 of the Act (19 U.S.C. 2271(a) and 2272).

The final determination of the Secretary, issued pursuant to Section 223 of the Act (19 U.S.C. 2273) and published in the Federal Register on September 28, 1976, at 41 FR 42719-42721, concluded as follows:

All workers at the Lackawanna plant of Bethlehem Steel Corporation, Woodlawn, New York, engaged in the production of carbon steel structural shapes and piling in the Mills Structural and Slabbing Division who became totally or partially separated from employment on or after May 7, 1975, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

I further conclude that increases of imports like or directly competitive with steel ingots, blooms and slabs produced in the plant's Steelmaking Division, carbon steel sheet and strip produced in the plant's Strip Mill Division, bar and steel rail produced in the plant's Mills Bar Division and special products produced in the plant's Specialty Products Shop did not contribute importantly to the total or partial separations of workers at that plant.
[41 FR at 42721.]

Petitioner has petitioned this Court for review under Section 250 of the Act (19 U.S.C. 2322), which sets forth the scope of judicial review and provides that the Secretary's findings shall be conclusive if supported by substantial evidence. The petitioner does not seek to have the Secretary's findings, set forth above, reversed, overturned, or modified under Section 250(c). The petitioner seeks instead an order from this Court to the Secretary to allow workers not in the above-certified group to apply for adjustment assistance, if they are laid off and replaced by a worker in the above-certified group who has received adjustment assistance.

Under some collective bargaining agreements, as at the Company in this case, an individual who is laid off may exercise seniority rights to replace a worker in another portion of the firm, i.e., to "bump" the lower-seniority worker. As petitioner has stated in his Brief at page 2, under the collective bargaining agreement in the firm in question, the higher seniority worker must be out of work for 26 weeks prior to exercising bumping rights. Petitioner is asking that non-certified workers be deemed eligible to receive adjustment assistance, even if bumped by certified workers who have collected adjustment assistance during the 26-week layoff.

Pursuant to Section 239 of the Act (19 U.S.C. 2311), the Secretary has entered into an agreement with the New York State Department of Labor (hereinafter referred to as the State

agency) under which the State agency provides worker adjustment assistance to eligible members of certified groups of workers in the State of New York. (Appendix 1) ^{1/}

To receive adjustment assistance the individual worker in the certified group must meet the qualifying requirements under Section 231 of the Act (19 U.S.C. 2291). To receive the trade readjustment allowance form of worker adjustment assistance, the individual worker must meet the availability and disqualification provisions of the applicable State unemployment compensation law. 19 U.S.C. 2294. The applicable State law is the law under which the individual is eligible for unemployment compensation, even if the compensation has not been applied for. If the worker is not eligible for State unemployment compensation, the applicable State law is the unemployment compensation law of the State in which the worker was totally or partially separated from employment. 19 U.S.C. 2294 and 2319(10).

For most workers in the certified group at the Company, the applicable State law is the New York Unemployment Insurance Law, Art. 18, Ch. 31g Sections 500 et seq., of the Consolidated Laws of New York. Determinations by State unemployment compensation agencies, such as the New York State agency, with respect to entitlement of program benefits under a Trade Act federal-state agreement, are subject to review in the same manner and to the same extent as determinations

^{1/} The reference is to the attached appendix to this brief for the Secretary.

under the applicable State unemployment compensation law and only in that manner and to that extent. 19 U.S.C. 2311(d).

In order to qualify for adjustment assistance, an individual, in pertinent part, must be covered by a certification, such as the certification under review in this action, and must be an adversely affected worker. 19 U.S.C. 2291, and 2319(1) and (2). The term "adversely affected worker" means an individual who, because of lack of work in adversely affected employment has been totally or partially separated from such employment, or has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists, i.e., a worker who has been bumped. 19 U.S.C. 2319(2). The term "adversely affected employment" means employment in a firm or appropriate subdivision of a firm, if workers of such firm or such subdivision are eligible to apply for adjustment assistance under Sections 221-250 of the Act (19 U.S.C. 2271-2322), i.e., are covered by a Section 223 (19 U.S.C. 2273) certification. 19 U.S.C. 2319(1). Pursuant to the agreements between the Secretary and State unemployment compensation agencies, and subject to the Act and the Secretary's regulations, the State agency determines whether an individual is an adversely affected worker covered by a certification, and whether such worker meets the other qualifying requirements of Section 231 of the Act (19 U.S.C. 2291). 19 U.S.C. 2311(a)(1).

If the worker's applicable State is the State of New York, a claimant for worker adjustment assistance dissatisfied by an initial determination of the State agency may appeal that determination to an appeals referee. New York Unemployment Insurance Law § 620.1(a). If the individual is dissatisfied with the decision of the appeals referee, an appeal may be made to the State agency's Appeal Board. New York Unemployment Insurance Law § 621.1. Further appeal may be made to the Appellate Division, New York State Supreme Court, Third Department, and then to the State Court of Appeals. New York Unemployment Insurance Law § 624.

The various forms of adjustment assistance under the Act include trade readjustment allowances (Sections 231-234; 19 U.S.C. 2291-2294), employment services (Section 235; 19 U.S.C. 2295), training (Section 236; 19 U.S.C. 2296), job search allowances (Section 237; 19 U.S.C. 2297), and relocation allowances (Section 238; 19 U.S.C. 2298).

PERTINENT STATUTORY PROVISIONS

Chapter 2 of Title II of the Trade Act of 1974, as amended, 19 U.S.C. §§ 2271-2322, provides, in pertinent part, as follows:

Section 221 (19 U.S.C. 2271) [PETITIONS]:

(a) A petition for a certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary of Labor (hereinafter in this chapter referred to as the "Secretary") by a group of workers or by their certified or recognized

union or other duly authorized representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

(b) If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under subsection (a) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

Section 222 (19 U.S.C. 2272) [GROUP ELIGIBILITY REQUIREMENTS]:

The Secretary shall certify a group of workers as eligible to apply for adjustment assistance under this chapter if he determines--

(1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated.

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (c), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Section 223 (19 U.S.C. 2273) [DETERMINATIONS BY SECRETARY OF LABOR]:

(a) As soon as possible after the date on which a petition is filed under section 221, but in any event not later than 60 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 222 and shall issue a certification of eligibility to apply for assistance under this chapter covering workers in any group which meets such requirements. Each certification shall specify the date on which the total or partial separation began or threatened to begin.

(b) A certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm before his application under section 231 occurred--

(1) more than one year before the date of the petition on which such certification was granted, or

(2) more than 6 months before the effective date of this chapter.

Section 231 (19 U.S.C. 2291) [QUALIFYING REQUIREMENTS FOR WORKERS]:

Payment of a trade readjustment allowance shall be made to an adversely affected worker covered by a certification under subchapter A who files an application for such allowance for any week of unemployment which begins after the date specified in such certification pursuant to section 223(a), if the following conditions are met:

(1) Such worker's last total or partial separation before his application under this chapter, occurred--

(A) on or after the date, as specified in the certification under which he is covered, or which total or partial separation began or threatened to begin in the adversely affected employment, and

(B) before the expiration of the 2-year period beginning on the date on which the determination under section 23 was made, and

(C) before the termination date (if any) determined pursuant to section 223, and

(2) Such worker had, in the 52 weeks immediately preceding such total or partial separation, at least 26 weeks of employment at wages of \$30 or more a week in adversely affected employment with a single firm or subdivision of a firm, or, if data with respect to weeks of employment are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary.

Section 234 (19 U.S.C. 2294) [APPLICATION OF STATE LAWS]:

Except where inconsistent with the provisions of this chapter and subject to such regulations as the Secretary may prescribe, the availability and disqualification provisions of the State law--

(1) under which an adversely affected worker is entitled to unemployment insurance (whether or not he has filed a claim for such insurance), or

(2) if he is not so entitled to unemployment insurance, of the State in which he was totally or partially separated,

shall apply to any such worker who files a claim for trade readjustment allowances. The State law so determined with respect to a separation of a worker shall remain applicable, for purposes of the preceding sentence, with respect to such separation until such worker becomes entitled to unemployment insurance under another State law (whether or not he has filed a claim for such insurance).

Section 235 (19 U.S.C. 2295) [EMPLOYMENT SERVICES]:

The Secretary shall make every reasonable effort to secure for adversely affected workers covered by a certification under subchapter A

of this chapter counseling, testing, and placement services, and supportive and other services, provided for under any other Federal law. The Secretary shall, whenever appropriate, procure such services through agreements with cooperating State agencies.

Section 236 (19 U.S.C. 2296) [TRAINING], provides, in pertinent part:

(a) If the Secretary determines that there is no suitable employment available for an adversely affected worker covered by a certification under subchapter A of this chapter, but that suitable employment (which may include technical and professional employment) would be available if the worker received appropriate training, he may approve such training. Insofar as possible, the Secretary shall provide or assure the provision of such training on the job.

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Section 237 (19 U.S.C. 2297) [JOB SEARCH ALLOWANCES], provides, in pertinent part:

(a) Any adversely affected worker covered by a certification under subchapter A of this chapter who has been totally separated may file an application with the Secretary for a job search allowance. Such allowance, if granted, shall provide reimbursement to the worker of 80 percent of the cost of his necessary job search expenses as prescribed by regulations of the Secretary; except that such reimbursement may not exceed \$500 for any worker.

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Section 238 (19 U.S.C. 2298) [RELOCATION ALLOWANCES], provides, in pertinent part:

(a) Any adversely affected worker covered by a certification under subchapter A of this chapter who has been totally separated may file an application with the Secretary for a relocation allowance, subject to the terms and conditions of this section.

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Section 239 (19 U.S.C. 2311) [AGREEMENTS WITH STATES]:

(a) The Secretary is authorized on behalf of the United States to enter into an agreement with any State, or with any State agency (referred to in this subchapter as "cooperating States" and "cooperating States agencies" respectively). Under such an agreement, the cooperating State agency (1) as agent of the United States, will receive applications for, and will provide, payments on the basis provided in this chapter, (2) where appropriate, will afford adversely affected workers who apply for payments under this chapter testing, counseling, referral to training, and placement services, and (3) will otherwise cooperate with the Secretary and with other State and Federal agencies in providing payments and services under this chapter.

(b) Each agreement under this subchapter shall provide the terms and conditions upon which the agreement may be amended, suspended, or terminated.

(c) Each agreement under this subchapter shall provide that unemployment insurance otherwise payable to any adversely affected worker will not be denied or reduced for any week by reason of any right to payments under this chapter.

(d) A determination by a cooperating State agency with respect to entitlement to program benefits under an agreement is subject to review in the same manner and to the same extent as determinations under the applicable State law and only in that manner and to that extent.

(e) Section 3302(c) of the Internal Revenue Code of 1954 (relating to credits against Federal unemployment tax) is amended by inserting after paragraph (3) the following new paragraph:

"(4) If the Secretary of Labor determines that a State, or State agency, has not--

"(A) entered into the agreement described in section 239 of the Trade Act of 1974, with the Secretary of Labor before July 1, 1975, or

"(B) fulfilled its commitments under an agreement with the Secretary of Labor as described in section 239 of the Trade Act of 1974, then, in the case of a taxpayer subject to the unemployment compensation law of such State, the total credits (after applying subsections (a) and (b) and paragraphs (1), (2), and (3) of this section) otherwise allowable under this section for a year during which such State or agency does not enter into or fulfill such an agreement shall be reduced by 15 percent of the tax imposed with respect to wages paid by such taxpayer during such year which are attributable to such State."

Section 247 (19 U.S.C. 2319) [DEFINITIONS], in pertinent part:

For purposes of this chapter--

(1) The term "adversely affected employment" means employment in a firm or appropriate subdivision of a firm, if workers of such firm or subdivision are eligible to apply for adjustment assistance under this chapter.

(2) The term "adversely affected worker" means an individual who, because of lack of work in adversely affected employment--

(A) has been totally or partially separated from such employment, or

(B) has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists.

Section 248 (19 U.S.C. 2320) [REGULATIONS]:

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this chapter.

Section 250 (19 U.S.C. 2322) [JUDICIAL REVIEW]:

(a) A worker, group of workers, certified or recognized union, or an authorized representative of such worker or group, aggrieved by a final determination by the Secretary under the the provisions of section 223 may, within 60 days after notice of such determination, file a petition for review of such determination with the United States court of appeals for the circuit in which such worker or group is located or in the United States Court of Appeals for the District of Columbia Circuit. The clerk of such court shall send a copy of such petition to the Secretary. Upon receiving such petition, the Secretary shall promptly certify and file in such court the record on which he based such determination.

(b) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgement of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

The regulations of the Secretary concerning certification of eligibility to apply for worker adjustment assistance are found at 29 CFR Part 90. The regulations of the Secretary concerning worker adjustment assistance for workers after certification are found at 29 CFR Part 91.

Procedures for the payment of adjustment assistance allowances for workers are published in Part C of MA Handbook No. 315, "Adjustment Assistance for Workers Under the Trade Act of 1974", which was attached as Exhibit "A" to the Memorandum of Points and Authorities in Support of Respondent's Motion to Dismiss Petition for Review submitted to this Court on June 15, 1977.

STATEMENT OF THE FACTS

On May 11, 1976, the Office of Trade Adjustment Assistance (hereinafter referred to as OTAA) of the United States Department of Labor received a petition dated May 7, 1976 which was signed by three employees of the Company, petitioning for certification of eligibility to apply for worker adjustment assistance under Section 221(a) of the Act (19 U.S.C. 2271(a)) (Appendix 2). Upon receipt of the petition, OTAA instituted Investigation No. TA-W-884, notice of which was published in the Federal Register on June 11, 1976 (41 FR 23819-23820) (Appendix 3). No public hearing was requested and none was held. The investigation was undertaken to determine if the certification eligibility requirements of Section 222

of the Act (19 U.S.C. 2272) had been met and whether the group of workers and former workers in question were eligible to apply for adjustment assistance under the Act.

The Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance was published in the Federal Register on September 28, 1976 (41 FR 42719-42721) (Appendix 4). These determinations concluded that all workers at the Lackawanna Plant engaged in the production of carbon steel structural shapes and piling in the Mills Structural and Slabbing Division who became totally or partially separated from employment on or after May 7, 1975, were eligible to apply for worker adjustment assistance under the Act. All workers related to the production of steel ingots, blooms and slabs produced in the plant's Steelmaking Division, carbon steel sheet and strip produced in the plant's Strip Mill Division, bar and steel rail produced in the plant's Mills Bar Division, and specialty products produced in the plant's Specialty Products Shop were denied certification.

On November 12, 1976, petitioner filed the petition with this Court for review of the Secretary's certification after Investigation TA-W-884. On November 15, 1976, the International Representative of the United Steelworkers of America filed a petition with the OTAA for reconsideration of the Secretary's investigation at the same plant. Appendix 5. On May 16, 1977, the petition for reconsideration before the OTAA was denied. Appendix 6. In the letter denying reconsideration the Director of the OTAA states, in pertinent part,

that "with regard to the bumping issue, this . . . involves the interpretation of 'work status' and would have to be resolved by the state [agency]"

STATEMENT OF THE ISSUE

Whether or not workers not in the certified group, who are laid off and replaced by higher seniority workers from the certified group (i.e., "bumped"), are eligible to receive worker adjustment assistance, even though the higher seniority worker (i.e., the "bumper") has been receiving worker adjustment assistance.

ARGUMENTS

THIS COURT LACKS JURISDICTION OVER THE ISSUES OF THIS ACTION

Petitioner has filed a petition under Section 250 of the Act (19 U.S.C. 2322) for judicial review of a certification made under Section 223 of the Act (19 U.S.C. 2273). In reality, however, this action seeks to have the Court invalidate the Secretary's "bump" interpretation, found on page C-I-3 of MA Handbook No. 315, attached as Exhibit "A" of the Secretary's memorandum in support of his Motion to Dismiss, submitted to the Court on June 18, 1977. For that reason, the Secretary renews and reaffirms his Motion to Dismiss submitted on that date, and which was dismissed without prejudice by this Court on July 19, 1977 and incorporates herein the motion and the

memorandum in support thereof.

Under many collective bargaining agreements higher seniority workers who are laid off in one division of a company have the right to "bump" lower seniority employees from other divisions of the company. In the company in question, the higher seniority worker may exercise his or her bumping privilege only after being laid off for 26 weeks. Petitioner's Brief at 2.

Bumped employees ("bumpees") may be eligible in certain circumstances for worker adjustment assistance pursuant to Section 247(2)(B) of the Act (19 U.S.C. 2319(2)(B)), as interpreted in 29 CFR 91.3(a)(4) and on page C-I-3 of Handbook No. 315:

This type of separation occurs when an individual employed in a non-adversely affected subdivision of a firm is "bumped" as a direct result of the exercise of a seniority right to another job in the firm by a worker who, due to lack of work, has been separated from an adversely affected subdivision of such firm. If more than one bump is involved, all that is required is that there be sufficient evidence of the connection through each successive bump.

There are two rationales for the "bump" interpretation. First, there is a unbroken causal connection between the lack of work caused by increased imports and the separation of the bumped worker from employment. Second, the total number of workers in adversely affected employment at the firm covered by the certification remains unchanged.

Review of the Secretary's bump interpretation is not within the permissible scope of jurisdiction granted to this Court by Congress in Section 250(a) of the Act (19 U.S.C. 2322(a)). The

bump interpretation pertains to the State agency's determination of whether an individual is an "adversely affected worker" under Section 247(2) of the Act (19 U.S.C. 2319(2)). Payment of a trade readjustment allowance, a job search allowance, or a relocation allowance, or provision of employment or training services, under the Act, may be made only to "an adversely affected worker covered by a certification under [Sections 221-224 (19 U.S.C. 2271-2274) of the Act]. . . ." 19 U.S.C. 2291, 2295, 2296(a), 2297(a), and 2298(a). That means the individual must not only be within a group certified by the Secretary, but must also be determined by the State agency to be an adversely affected worker eligible for benefits.

The Secretary is without knowledge or information as to the adverse effect of imports on any individual worker at the Company. The proper jurisdiction over the issue in this action lies with the New York State agency, or another State's unemployment compensation agency, if applicable. Under the provisions of Section 239 of the Act (19 U.S.C. 2311) and the applicable federal-state agreement (see Appendix 1), the State determines the eligibility of individual workers under the worker adjustment assistance program. This Court, however, "like the several circuit courts of appeals is without the jurisdiction over original suits conferred on" other courts. American Federation of Labor v. National Labor Relations Board, 308 U.S. 401, 404 (1940).

Section 250(a) of the Act (19 U.S.C. 2322(a)) permits appropriate petitioners, "aggrieved by a final determination by the Secretary under the provisions of section 223 [19 U.S.C. 2273]" to appeal that determination to the appropriate United States Court of Appeals. The Section 223 determination only certifies the eligibility of a group of workers to apply for adjustment assistance. Petitioner wishes to have this Court review the Secretary's interpretation of the qualifying requirements for an individual to receive the benefits applied for, i.e., the bump interpretation of Section 247(2)(B) of the Act (19 U.S.C. 2319(2)(B)), set forth on Page C-I-3 of Handbook No. 315.

Review of the bump interpretation is not within the scope of jurisdiction granted to this Court by Congress in Section 250(a). The bump interpretation pertains to the eligibility of individual workers, not to the certifiability of a group of workers, and was made pursuant to the Secretary's specific authority to interpret the Act (19 U.S.C. 2320), and his general authority, as an official charged with the administration of a statute, to interpret and enforce its provisions. The bump interpretation applies to determinations of individual eligibility by State agencies by agreements under Section 239 of the Act (19 U.S.C. 2311), and was not made as a part of a certification or denial of certification under Section 223 of the Act (19 U.S.C. 2273), including the certification made after Investigation No. TA-W-884. Under Section 250 this

Court has only such jurisdiction as is necessary to review the Secretary's findings under Section 223, that is, to review certifications.

Since the bump interpretation of section 247 (2)(B) (19 U.S.C. 2319(2)(B)) is outside the scope of section 250 review, the Petition for Review in this action should be dismissed. Federal Power Commission v. Colorado Interstate Gas Company, 248 U.S. 492, 501 (1955); American Federation of Labor v. National Labor Relations Board, *supra*; Railway Express Agency v. Kennedy, 189 F. 2d 801 (7th Cir. 1951), *cert. denied*, 342 U.S. 830 (1951). If the petitioner or any other worker believes that he or she is eligible to receive adjustment assistance under the Act, application must be made to the applicable State agency, and appeal must be through the State administrative and judicial processes, consistent with the provisions of Sections 234 and 239 of the Act (19 U.S.C. 2294 and 2311).

THE SECRETARY'S INTERPRETATION OF
THE ACT SHOULD BE GIVEN GREAT WEIGHT

The Act is remedial legislation, intended in part to assist workers who have been adversely affected by increases in foreign imports. The bump interpretation of Section 247(2)(B) (19 U.S.C. 2319(2)(B)) is a liberal construction of the statute, permitting individuals whose separation from employment has an unbroken causal connection with increased

imports to receive adjustment assistance. A certification of a group of workers under Section 223 (19 U.S.C. 2273) is meant to cover the same number of workers as in the certified group. Allowing both the bumping and the bumped workers to receive adjustment assistance, as petitioner requests, would open the doors of the Treasury to many more workers than were contemplated under the certification or the Act, and more importantly, to workers not separated from adversely affected employment. The requested relief would give adjustment assistance to bumped workers in the Strip Mill Division, Mills Bar Division, and Specialty Products Shop, who were specifically excluded from the certified group by the Secretary, and were bumped by adversely affected workers who already received adjustment assistance. See 41 FR at 42721.

The layoff requirements at the Lackawanna Plant were created by the private collection bargaining agreement of the Company and the union. This private agreement should not be permitted to defeat the purposes of the statute and the reasonable construction of statute by the official charged with its administration.

An interpretation of a statute by an official charged with its execution is to be given great weight. Algoma Plywood & Veneer Company v. Wisconsin Employment Relations Board, 336 U.S. 301 (1949); Norwegian Nitrogen Products Company v. United States, 288 U.S. 294 (1933). All the Secretary's interpretation need be is reasonable. Udall v. Tallman, 380 U.S. 1, 4 (1965). The Secretary's interpretation is consistent

with his interpretation of similar terms of the Act's predecessor, the Trade Expansion Act of 1962, 19 U.S.C. 1978(1) and (2) (1970 ed.). Interpretations of statutes by officials charged with their administration rest on the "venerable principle that the construction of a statute by those charged with its execution should be followed unless there are compelling indications it is wrong." Red Lion Broadcasting Company v. FCC, 395 U.S. 367, 381 (1969). The interpretation contested by petitioner is reasonable and consistent with the Act, and is a contemporaneous construction of Section 247(2)(B). The interpretation must, therefore, be respected by this Court, and may not be overturned except for weighty reasons. Udall v. Tallman, supra; Fawcus Machine Company v. United States, 282 U.S. 375 (1931). An interpretation of a statute by the official charged with its execution not only in controlling unless plainly erroneous, but also, as long as it is reasonable, it need not even be the most reasonable interpretation of that statute. Brennan v. Southern Contractors Service, 492 F.2d 498, 501 (5th Cir. 1974).

CONCLUSION

This Court lacks jurisdiction under Section 250 of the Act (19 U.S.C. 2122) to decide the issues in this action. Section 250 gives this Court jurisdiction to hear petitions for review from only certifications and denials of certification

under Section 223 of the Act (19 U.S.C. 2273). This action, however, does not bear on the certification of eligibility of a group to apply for worker adjustment assistance under the Act, but on a rule of eligibility for individual workers to receive worker adjustment assistance under the Act. Determinations of individual eligibility are made by the applicable State agency, which in this case is probably the New York State Department of Labor. Appeal is through the State administrative process and then through the State judicial process.

The bump interpretation, as formulated by the Secretary, is a contemporaneous interpretation of an Act by the official charged with its interpretation. The petitioner has not alleged or proven any weighty or compelling reasons for overturning the Secretary's interpretation of the Act.

For the foregoing reasons, the petition should be denied or dismissed and the decision of the Secretary of Labor should be affirmed as it relates to the certification after Investigation TA-W-884 and to his interpretation of Section 247(2)(B) of the Act (19 U.S.C. 2319(2)(B)).

Respectfully submitted,

CARIN ANN CLAUSS
Solicitor of Labor

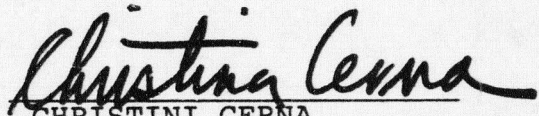
NATHANIEL BACCUS III
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for Employment and Training

JONATHAN H. WAXMAN,
BRUCE W. ALTER,
Attorneys,

U. S. Department of Labor
Suite N-2101
200 Constitution Avenue, N.W.
Washington, D. C. 20210
Tel. (202) 523-7850

CERTIFICATE OF SERVICE

I hereby certify that copies of this brief were mailed
this 9th day of August, 1977, to Walter M. Janczak,
14 Beach Street, Lackawanna, New York 14218, petitioner.



CHRISTINI CERNA

Attorney

U. S. Department of Labor
Washington, D. C. 20210

APPENDIX 1

CHAPTER 2 OF TITLE II OF THE TRADE ACT OF 1974

AGREEMENT

BETWEEN

NEW YORK STATE

AND

THE SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR

The Secretary of Labor, U.S. Department of Labor, hereinafter referred to as the Secretary and the _____

New York State Department of Labor

(Name of State or Agency)

by Louis L. Levine, Industrial Commissioner
(Title)

in order to carry out the program benefit provisions of Chapter 2 of Title II of the Trade Act of 1974 (P.L. 93-618) hereinafter referred to as the Act, hereby agree as follows:

I. This Agreement shall take effect on April 3, 1975.

II. The N.Y.S. Dept. of Labor, hereinafter referred to
(Name of Agency)

as the Agency, will act as agent of the United States in receiving applications for program benefits and making payments and furnishing services under the Act. The functions and duties undertaken pursuant to this Agreement will be performed in accordance with

the Act and the regulations and procedures prescribed thereunder. The Agency, where appropriate, will afford adversely affected workers testing, counseling, placement service, and selection and referral to training which to the maximum extent feasible shall be on-the-job training. The Agency shall refer individuals for training under the Comprehensive Employment and Training Act of 1973 (P.L. 93-203), as amended (CETA), to the extent that Prime Sponsors can provide or arrange for suitable training. The Agency will otherwise cooperate with the Secretary and with other State and Federal agencies, and CETA Prime Sponsors, in providing payments and services under the Act.

III. A determination by the Agency with respect to an individual's entitlement to adjustment assistance shall be subject to review in the same manner and to the same extent as determinations with respect to unemployment insurance under the State law and only in that manner and to that extent.

IV. The Agency will not deny or reduce unemployment insurance otherwise payable to an adversely affected worker under any State law or Federal unemployment insurance law for any week by reason of any right to a payment under the Act. If, with respect to any week of unemployment beginning on or after April 3, 1975, any reduction or denial of unemployment benefits was made pursuant to the unemployment insurance law of the State, on account of adjustment

assistance paid to an individual, the Agency agrees to pay the individual the full amount of the reduction or denial.

V. The Secretary shall from time to time certify for payment to the State the sums the Secretary determines to be necessary to enable the Agency to make payments and furnish services as provided for by the Act, plus the sums determined by the Secretary to be necessary for the costs of the proper and efficient administration of the Act by the Agency, including such expenses as are incurred by the Agency in the performance of services for another State in the administration of the Act. The Agency will keep a separate accounting of money made available for costs of administration.

VI. The Agency will use all money paid to the State under this Agreement solely for the purposes for which it is paid, and will return to the United States Treasury, upon request of the Secretary, any such money (a) if the Secretary finds that the money is not needed for such purpose or that the money has been used for a purpose other than that for which it was paid, or (b) upon suspension or termination of this Agreement.

VII. The Agency will take such action as reasonably may be necessary to recover for the account of the United States all amounts paid as adjustment assistance or used for costs of administration which are erroneously paid or used under the Act or this Agreement, and to restore any losses of funds paid to the State

for adjustment assistance or for costs of administration.

VIII. To the extent that agencies of the State obtain bonds to protect funds of the State, the Agency will require any officer or employee of the State certifying payments or disbursing funds under this Agreement or otherwise participating in the performance of the Agreement to give a surety bond to the United States in such amount as the Secretary deems necessary. The pro rata costs of such bonds shall be considered a necessary cost of administration. If under the State law the State acts as a self-insurer of State funds and does not obtain bonds to protect them, the Agency shall so inform the Secretary in writing and in that event the United States will act as a self-insurer with respect to funds which are paid to the Agency under this Agreement.

IX. The Agency will apply to personnel engaged in the functions undertaken pursuant to this Agreement the merit system required to be applicable to personnel engaged in unemployment compensation functions by section 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1)).

X. The Agency will maintain records pertaining to the administration of the Act as the Secretary requires, and will make all such records available for inspection, examination, and audit by such Federal officials or employees as the Secretary may designate or as may be required by law.

XI. The Agency will furnish to the Secretary such information and reports and will conduct such studies as are necessary or appropriate for carrying out the purposes of the Act.

XII. The Agency will make available to any individual or organization a true copy of this Agreement for inspection and copying. Copies of this Agreement may be furnished on request to any individual or organization upon payment of the same charges, if any, as apply to the furnishing of copies of other records of the Agency.

XIII. If the State, or the Agency, has not fulfilled its commitments under this Agreement, and the Secretary has made a determination to that effect, section 3302(c)(4) of the Internal Revenue Code of 1954 shall be implemented and the total credits otherwise allowable to taxpayers subject to the unemployment compensation law of the State shall be reduced by 15 percent. Prior to making any determination as to whether or not the State, or the Agency, has fulfilled its commitments under this Agreement, the Secretary shall notify the State, or the Agency, that proceedings have been undertaken to make that determination and that the State, or the Agency, if it so desires and informs the Secretary, will be afforded an opportunity for a hearing before the determination is made. Pending the making of a determination as provided herein, the Secretary may, if he determines that the seriousness of the situation warrants the action, suspend the Agreement by

written notice to the State, or the Agency, and make such arrangements as he may deem necessary or appropriate to assure the continuing administration of the Act in the State in accordance with the Act and the regulations and procedures prescribed thereunder.

XIV. This Agreement may be amended by a written instrument executed by both parties, and may be terminated by the State on thirty days written notice. If this Agreement is terminated by the State, all matters concerning the administration of the Act, and this Agreement in the State shall be concluded as soon thereafter as possible, and shall include all applications for adjustment assistance received by the Agency on or before the date of termination.

DATED April 7, 1975

For the New York State
Department of Labor
(State or Agency)

By: [Signature]
(Signature)

Industrial Commissioner
(Title)

DATED APR 16 1975, 1975

[Signature]
Secretary of Labor
U.S. Department of Labor

Louis L. Levine, Industrial Commissioner, has the
(Name and Title)
authority under the Constitution and laws of this State to sign this
Agreement in behalf of the State.

Date April 7, 1975

Sig:

[Signature]
Associate Counsel
(Title)

TA-W-884

U.S. Department of Labor

PETITION FOR ADJUSTMENT ASSISTANCE

OMB 44R 1598
Exp. Sept. 1980

This is a petition under Section 221(a) of the Trade Act of 1974 and Subpart B of Part 90 of the Rules and Regulations of the Secretary of Labor.

- I. State the name, address and telephone number of each petitioner and the group of workers on whose behalf the petition is filed. (For each petitioner who is a worker and who is not currently employed at the firm, give the date of his most recent total or partial separation from the firm.)

RECEIVED
MAY 11 10 04 AM '76
OFFICE OF
ADJUSTMENT ASSISTANCE
U.S. DEPARTMENT OF LABOR

Name:	1) <u>Walter M. Janczak</u>	2) <u>John Batt</u>	3) <u>Richard G. Paluch</u>
Address:	<u>14 Beech Street</u>	<u>76 Leachliff Lane</u>	<u>15 Gravel Place</u>
	<u>Lackawanna, N. Y.</u>	<u>West Seneca N. Y.</u>	<u>Lackawanna, N. Y.</u>
Telephone:	<u>824-9522</u>	<u>674-7050</u>	<u>826-6665</u>
Date of Separation:	<u>Sept. 27, 1975</u>	<u>Jan. 23, 1976</u>	<u>June 18, 1975</u>
Group of Workers Involved:	<u>Steelworkers - Lackawanna Plant Bethlehem Steel Co.</u>		

If the petition is being filed by a worker representative, give the capacity in which the petitioner is filing, e.g., union local president, corporate treasurer.

- II. List the name and address of the firm and each subdivision of the firm at which the workers for whom this petition is filed are (were) employed.

Bethlehem Steel Co. Lackawanna Plant
3555 Lake Shore Road
Woodlawn, New York 14075

- III. State the name, address, telephone number and title of an official of the firm. (The official should be someone knowledgeable about the firm's production, sales and employment.)

Fredrick A. Daggett Jr. General Plant Manager
3555 Lake Shore Road
Woodlawn, New York 14075 (716) 821-2201

- IV. State the date on which separations due to increased imports began and continued, or are scheduled to begin, and the approximate number of workers affected. (List this information separately for each subdivision of the firm listed in II.)

(This information not available to petitioners)

- V. Give a description of the articles produced by the firm, the sales or production of which are being adversely affected by increased imports, and a description of the imported articles concerned. (Include such information as the common and technical names of the articles, the method of manufacture, the end uses and the wholesale or retail value of the articles.)

Steel bars, beams, strips, ingots, billets and specialty steel items.

- VI. State the reasons for believing increased imports have contributed importantly to a decline in the sales or production of the firm or a subdivision of the firm and to the workers' actual or threatened loss of employment. (Attach any supporting documents such as statements by officials of the firm or newspaper articles.)

General decline in production in areas supplying the auto industry
while the auto industry is picking up. Also, no structural steel
production for quite some time. New York State contracted with
an Italian Steel Co. to supply steel for electrical transmission
towers in the state.

This petition must be signed below by three workers of the firm or by their duly authorized representative.

I (we) hereby affirm that the information included in this petition is correct to the best of my (our) knowledge and belief.

Signed

Walter M. Janczak
John Batt
Richard G. Paluch

Date: May 7, 1976

**Processing Instructions
Petition for Adjustment Assistance**

ILAB Form 20
(March 1975)

Who may file a petition—A petition may be filed by a group of three or more workers in a firm, or a subdivision thereof, by their union or other duly authorized representative. The workers on whose behalf a petition is filed must be, or have been, employed regularly at the firm or subdivision identified in the petition. The workers' employment must be, or have been, related to the production of articles described in the petition.

Assistance in preparing a petition—Workers may request assistance in preparing a petition at any local employment security agency office. Also, workers may write or telephone (202-523-6225) the Office of Trade Adjustment Assistance.

Filing a petition—Petitions should be addressed to:

U.S. Department of Labor
Bureau of International Labor Affairs
Office of Trade Adjustment Assistance
3rd Street and Constitution Avenue, N.W., Rm. S-5313
Washington, D. C. 20210

General instructions—Print or type. Complete all items. If more space is needed, attach additional sheets to this form. In some cases, some of the information requested may not be available. If so, give the reason it is not available, e.g., the firm will not release the information. Submit a signed original and two clear copies of this form when filing a petition.

Further information and clarification concerning the filing of this petition may be found in Title 29 of the Code of Federal Regulations, Part 90.

RECEIVED
U.S. DEPARTMENT OF LABOR
BUREAU OF INTERNATIONAL LABOR AFFAIRS
OFFICE OF TRADE ADJUSTMENT ASSISTANCE
WASHINGTON, D.C. 20210
MAY 1 1975

DEPARTMENT OF LABOR

Office of the Secretary

TA-W884

BETHLEHEM STEEL CORPORATION

Investigation Regarding Certification
of Eligibility to Apply for Worker Adjustment Assistance

On May 19, 1976 the Department of Labor received a petition dated May 7, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America

on behalf of the workers and former workers of Lackawanna plant, Woodlawn, New York, subsidiary of Bethlehem Steel Corp., Bethlehem, Pa. (TA-W-884).

Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with

steel bars, beams, strips, ingots, billets and specialty steel items produced by Bethlehem Steel Corporation,

or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to

the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than 21 JUN 1976

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 19th day of May 1976.

Marvin M. Fooks

MARVIN M. FOOKS
Director, Office of
Trade Adjustment Assistance

BEST COPY AVAILABLE

[TA-W-884]

BETHLEHEM STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

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1976, which was filed under Section 221 (a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Lackawanna plant, Woodlawn, New York, subsidiary of Bethlehem Steel Corp., Bethlehem, Pa. (TA-W-884).

Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with steel bars, beams, strips, ingots, billets and specialty steel items produced by Bethlehem Steel Corporation, or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 21, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 19th day of May 1976.

MARVIN M. FOOKS,
*Director, Office of
Trade Adjustment Assistance.*

[FR Doc.76-17103 Filed 6-10-76;8:45 am]

DEPARTMENT OF LABOR

Office of the Secretary

[TA-W-884]

BETHLEHEM STEEL CORPORATION
LACKAWANNA WORKS
WOODLAWN, NEW YORK

Notice of Determinations Regarding Eligibility
to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-884: investigation regarding certification of eligibility to apply for workers adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on May 19, 1976 in response to a worker petition received on May 19, 1976 which was filed by three workers on behalf of workers and former workers producing steel bars, beams, strips, ingots, billets and specialty steel items. The investigation revealed that the following products were also produced: carbon steel sheet, structural shapes and piling, slabs, blooms and steel rail.

The Notice of Investigation was published in the Federal Register on June 11, 1976 (41 FR 23819). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Bethlehem Steel Corporation and its customers, the U.S. Department of Commerce, the American Iron and Steel Institute, the U.S. International Trade Commission, industry analysts and Department files

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance

each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

- (1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;
- (2) that sales or production, or both, of such firm or subdivision have decreased absolutely;
- (3) that articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and
- (4) that such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that with respect to those workers engaged in the production of structural steel and piling in the Mills Structural and Slabbing Division, all four criteria have been met. With respect to those workers engaged in the production of steel ingots, blooms and slabs in the plant's Steelmaking Division, carbon steel sheet and strip in the plant's Strip Mill Division and specialty items, consisting primarily of guard rail, corrugated roofing and steel shapes, in the plant's Specialty Products Shop, the fourth criterion has not been met. With respect to those workers engaged in the production of bars in the Mills Bar Division, the third criterion has not been met and with respect to those workers engaged in the production of steel rail in the Mills Bar Division, the second criterion has not been met.

Significant Total and Partial Separations

Employment of production workers in the plant's Steelmaking Division engaged in the production of steel ingots, blooms and slabs decreased 4.9 percent in 1974 compared with 1973, decreased 58.3 percent in 1975 compared with 1974 and decreased 11.1 percent in the first half of 1976 compared with the first half of 1975.

Employment of production workers engaged in sheet and strip production in the plant's Strip Mill Division decreased 5.6 percent in 1974 compared with 1973, decreased 53.3 percent in 1975 compared with 1974 and increased 85.8 percent in the first half of 1976 compared with the first half of 1975.

Employment of production workers engaged in the production of structural steel and piling in the Mills Structural and Slabbing Division decreased 7.0 percent in 1974 compared with 1973, decreased 55.3 percent in 1975 compared with 1974 and decreased 45.8 percent in the first half of 1976 compared with the first half of 1975.

Employment of production workers engaged in the production of bar and steel rail in the Mills Bar Division decreased 14.0 percent in 1974 compared with 1973, decreased 27.8 percent in 1975 compared with 1974 and decreased 13.3 percent in the first half of 1976 compared with the first half of 1975.

Employment of production workers in the plant's Specialty Products Shop engaged in the production of special products such as guard rail and specified shapes decreased 9.1 percent in 1974 compared with 1973, decreased 66.0 percent in 1975 compared with 1974 and decreased 5.7 percent in the first half of 1976 compared with the first half of 1975.

Sales or Production, or Both, Have Decreased Absolutely

Sales to trade customers of blooms, slabs and ingots from Lackawanna's Steelmaking Division in terms of quantity decreased 68.2 percent in 1974 compared with 1973, increased 46.6 percent in 1975 compared with 1974 and decreased 90.0 percent in the first quarter of 1976 compared with the first quarter of 1975. Sales of blooms, slabs and ingots have never exceeded 5.0 percent of the Division's production of blooms, slabs and ingots since 1973.

Sales of sheet and strip in terms of quantity from the plant's Strip Mill Division increased 2.9 percent in 1974 compared with 1973, decreased 53.8 percent in 1975 compared with 1974 and decreased 30.5 percent in the first quarter of 1976 compared with the first quarter of 1975.

Sales of structural steel and piling in terms of quantity from the Mills Structural and Slabbing Division decreased 17.0 percent in 1974 compared with 1973, decreased 45.0 percent in 1975 compared with 1974 and decreased 82.1 percent in the first quarter of 1976 compared with the first quarter of 1975. No wide flanged structural steel has been produced at Lackawanna since May 1975.

Sales of bar in terms of quantity from the Mills Bar Division decreased 1.7 percent in 1974 compared with 1973, decreased 31.6 percent in 1975 compared with 1974 and decreased 30.8 percent in the first quarter of 1976 compared with the first quarter of 1975.

Sales of special items from the plant's Specialty Products Shop in terms of quantity decreased 15.9 percent in 1974 compared with 1973, decreased 48.9 percent in 1975 compared with 1974 and decreased 22.6 percent in the first quarter of 1976 compared with the first quarter of 1975.

Sales of rail in terms of quantity from the plant's Bar Mill Division increased 120.9 percent in 1974 compared with 1973, increased 80.7 percent in 1975 compared with 1974 and increased 95.1 percent in the first quarter of 1976 compared with the first quarter of 1975.

Production of ingots, slabs, and blooms in terms of quantity in the plant's Steelmaking Division decreased 17.5 percent in 1974 compared with 1973, decreased 42.4 percent in 1975 compared with 1974 and decreased 17.4 percent in the first quarter of 1976 compared with the first quarter of 1975.

Production of sheet and strip in the plant's Strip Mill Division in terms of quantity increased 3.0 percent in 1974 compared with 1973, increased 55.9 percent in 1975 compared with 1974 and increased 30.7 percent in the first quarter of 1976 compared with the first quarter of 1975.

Production of structural shapes and pilings in the plant's Structural and Slabbing Mill Division in terms of quantity decreased 20.8 percent in 1974 compared with 1973, decreased 47.2 percent in 1975 compared with 1974 and decreased 82.0 percent in the first quarter of 1976 compared with the first quarter of 1975.

Production of bars in terms of quantity in the plant's Bar Mill Division decreased 7.9 percent in 1974 compared with 1973, decreased 33.5 percent in 1975 compared with 1974 and decreased 29.9 percent in the first quarter of 1976 compared with the first quarter of 1975.

Production of specialty items in terms of quantity in the plants Specialty Products Shop decreased 19.9 percent in 1974

compared with 1973, decreased 50.6 percent in 1975 compared with 1974 and decreased 37.5 percent in the first quarter of 1976 compared with the first quarter of 1975.

Production of rail in terms of quantity in the Mills Bar Division increased 155.8 percent in 1974 compared with 1973, increased 96.4 percent in 1975 compared with 1974 and increased 81.0 percent in the first quarter of 1976 compared with the first quarter of 1975.

Increased Imports

Carbon steel blooms, slabs and ingots are included in a category also including castings, billets and sheet bars. Imports of this category decreased 5.3 percent in 1972 compared with 1971, decreased 45.7 percent in 1973 compared with 1972, increased 40.0 percent in 1974 compared with 1973, increased 48.7 percent in 1975 compared with 1974 and decreased 43.6 percent in the first quarter of 1976 compared with the first quarter of 1975. The ratios of imports to domestic production and consumption increased from 0.10 percent for each in 1974 to 0.18 percent for each in 1975 and decreased from 0.22 percent for each in the first quarter of 1975 to 0.14 percent for each in the first quarter of 1976.

Imports of carbon steel sheet and strip decreased 9.7 percent in 1972 compared with 1971, decreased 15.8 percent in 1973 compared with 1972, decreased 3.1 percent in 1974 compared with 1973, decreased 23.3 percent in 1975 compared with 1974 and decreased 16.3 percent in the first quarter of 1976 compared with the first quarter of 1975. The ratios of imports to domestic shipments and consumption

increased from 13.3 percent and 12.1 percent, respectively, in 1974 to 14.9 percent and 13.0 percent, respectively, in 1975 and decreased from 18.4 percent and 15.7 percent, respectively, in the first quarter of 1975 to 11.7 percent and 10.5 percent, respectively in the first quarter of 1976.

Imports of carbon steel structural shapes and piling increased 9.1 percent in 1972 compared with 1971, decreased 22.1 percent in 1973 compared with 1972, decreased 7.9 percent in 1974 compared with 1973, decreased 29.2 percent in 1975 compared with 1974 and increased 16.7 percent in the first half of 1976 compared with the first half of 1975. The ratio of imports to domestic shipments increased from 19.1 percent in 1974 to 19.2 percent in 1975 and the ratio of imports to domestic consumption decreased from 16.8 percent in 1974 to 16.6 percent in 1975. The ratios of imports to domestic shipments and consumption increased from 18.5 percent and 16.1 percent, respectively, in the first half of 1975 to 30.6 percent and 23.8 percent, respectively, in the first half of 1976.

Imports of bar increased 6.8 percent in 1972 compared with 1971, decreased 9.2 percent in 1973 compared with 1972, decreased 8.5 percent in 1974 compared with 1973, decreased 37.1 percent in 1975 compared with 1974 and decreased 60.5 percent in the first half of 1976 compared with the first half of 1975. The ratios of imports to domestic shipments and consumption decreased from 8.6 percent and 8.1 percent, respectively, in 1974 to 7.7 percent and 7.2 percent, respectively, in 1975 and decreased from 9.8 percent and 9.1 percent, respectively, in the first half of 1975 to 4.0 percent and 3.9 percent, respectively, in the first half of 1976.

Imports of steel rail increased 31.4 percent in 1972 compared

with 1971, decreased 0.5 percent in 1973 compared with 1972, increased 26.1 percent in 1974 compared with 1973, increased 81.2 percent in 1975 compared with 1974 and decreased 77.0 percent in the first quarter of 1976 compared with the first quarter of 1975. The ratios of imports to domestic shipments and consumption increased from 5.4 percent and 5.6 percent, respectively, in 1974 to 7.7 percent and 8.0 percent, respectively, in 1975 and decreased from 6.6 percent and 6.5 percent, respectively, in the first quarter of 1975 to 1.4 percent and 1.5 percent, respectively, in the first quarter of 1976.

Contributed Importantly

Over 95 percent of the steel ingots, blooms and slabs of the plant's Steelmaking Division are consumed by Bethlehem Steel Corporation in the production of steel products at either the Lackawanna plant or at other Bethlehem Steel Mills. Less than 5 percent of the Division's production represents sales to trade customers.

Carbon steel structural shapes and piling customers of the Mills Structural and Slabbing Division indicated that imports were an important factor in current procurement decisions. Some customers had shifted purchases of steel to foreign sources because of its lower price. All customers indicated that foreign structural steel and piling are readily available at cheaper prices than domestic steel and that the availability and use of this foreign steel together with the current slump in the construction industry were adversely affecting their businesses.

Carbon steel sheet and strip customers of the plant's Strip Mill Division were primarily engaged in the manufacture of automobiles and automobile component parts. Use of imported steel was minimal by

these customers although domestic supply conditions in 1974, in which steel consumers were placed on allocation basis by the domestic steel industry, in some cases did affect steel purchase patterns in 1974 and somewhat in 1975. Fluctuations in purchases of sheet and strip were primarily in response to changes in sales and production in the auto industry. Purchases of sheet and strip were substantial in 1974 as the auto industry prospered but dropped sharply in 1975 as automobile sales and production fell. Purchases of sheet and strip have been increasing in 1976. The Department has not recommended a certification in any prior case involving carbon steel sheet and strip based on the facts and information presented.

The Lackawanna plant's Specialty Products Shop produces highway guard rail, guard rail material, corrugated roofing and a variety of shapes and products manufactured to customer specifications. These customers indicated that they had not shifted purchases to foreign sources. Purchases were influenced by domestic business conditions and in the case of guard rail and guard rail material were influenced by State and Federal specifications for the use of domestic product only.

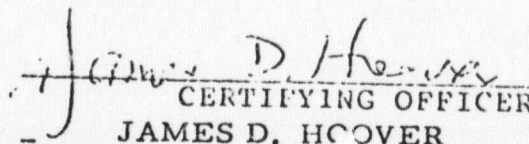
Conclusion

After review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with carbon steel structural shapes and piling produced in the Mills Structural and Slabbing Division of the Lackawanna plant of Bethlehem Steel Corporation, located in Woodlawn, New York, contributed importantly to the total or partial separations of the workers at that plant. In accordance with the provisions of the Act, I make the following certification:

"All workers at the Lackawanna plant of Bethlehem Steel Corporation, Woodlawn, New York, engaged in the production of carbon steel structural shapes and piling in the Mills Structural and Slabbing Division who became totally or partially separated from employment on or after May 7, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

I further conclude that increases of imports like or directly competitive with steel ingots, blooms and slabs produced in the plant's Steelmaking Division, carbon steel sheet and strip produced in the plant's Strip Mill Division, bar and steel rail produced in the Mills Bar Division and special products produced in the plant's Specialty Products Shop did not contribute importantly to the total or partial separations of the workers at that plant.

Signed at Washington, D.C. this 20th day of September 1976.


CERTIFYING OFFICER
JAMES D. HCOVER

structural shapes and piling, slabs, blooms and steel rail.

The Notice of Investigation was published in the FEDERAL REGISTER on June 11, 1976 (41 FR 23819). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Bethlehem Steel Corporation and its customers, the U.S. Department of Commerce, the American Iron and Steel Institute, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that with respect to those workers engaged in the production of structural steel and piling in the Mills Structural and Slabbing Division, all four criteria have been met. With respect to those workers engaged in the production of steel ingots, blooms and slabs in the plant's Steelmaking Division, carbon steel sheet and strip in the plant's Strip Mill Division and specialty items, consisting primarily of guard rail, corrugated roofing and steel shapes, in the plant's Specialty Products Shop, the fourth criterion has not been met. With respect to those workers engaged in the production of bars in the Mills Bar Division, the third criterion has not been met and with respect to those workers engaged in the production of steel rail in the Mills Bar Division, the second criterion has not been met.

SIGNIFICANT TOTAL AND PARTIAL SEPARATIONS.

Employment of production workers in the plant's Steelmaking Division engaged in the production of steel ingots, blooms and slabs decreased 4.9 percent in 1974 compared with 1973, decreased 58.3 percent in 1975 compared with 1974 and decreased 11.1 percent in the first half of 1976 compared with the first half of 1975.

Employment of production workers engaged in sheet and strip production in the plant's Strip Mill Division decreased

[TA-W-884]

BETHLEHEM STEEL CORP. LACKAWANNA WORKS

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-884: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on May 19, 1976 in response to a worker petition received on May 19, 1976 which was filed by three workers on behalf of workers and former workers producing steel bars, beams, strips, ingots, billets and specialty steel items. The investigation revealed that the following products were also produced: carbon steel sheet,

5.6 percent in 1974 compared with 1973, decreased 53.3 percent in 1975 compared with 1974 and increased 85.9 percent in the first half of 1976 compared with the half of 1975.

Employment of production workers engaged in the production of structural steel and piling in the Mills Structural and Slabbing Division decreased 7.0 percent in 1974 compared with 1973, decreased 55.3 percent in 1975 compared with 1974 and decreased 45.8 percent in the first half of 1976 compared with the first half of 1975.

Employment of production workers engaged in the production of bar and steel rail in the Mills Bar Division decreased 14.0 percent in 1974 compared with 1973, decreased 27.8 percent in 1975 compared with 1974 and decreased 13.3 percent in the first half of 1976 compared with the first half of 1975.

Employment of production workers in the plant's Specialty Products Shop engaged in the production of special products such as guard rail and specified shapes decreased 9.1 percent in 1974 compared with 1973, decreased 66.0 percent in 1975 compared with 1974 and decreased 5.7 percent in the first half of 1976 compared with the first half of 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales to trade customers of blooms, slabs and ingots from Lackawanna's Steelmaking Division in terms of quantity decreased 68.2 percent in 1974 compared with 1973, increased 46.6 percent in 1975 compared with 1974 and decreased 90.0 percent in the first quarter of 1976 compared with the first quarter of 1975. Sales of blooms, slabs and ingots have never exceeded 5.0 percent of the Division's production of blooms, slabs and ingots since 1973.

Sales of sheet and strip in terms of quantity from the plant's Strip Mill Division increased 2.9 percent in 1974 compared with 1973, decreased 53.8 percent in 1975 compared with 1974 and decreased 30.5 percent in the first quarter of 1976 compared with the first quarter of 1975.

Sales of structural steel and piling in terms of quantity from the Mills Structural and Slabbing Division decreased 17.0 percent in 1974 compared with 1973, decreased 45.0 percent in 1975 compared with 1974 and decreased 82.1 percent in the first quarter of 1976 compared with the first quarter of 1975. No wide flanged structural steel has been produced at Lackawanna since May 1975.

Sales of bar in terms of quantity from the Mills Bar Division decreased 1.7 percent in 1974 compared with 1973, decreased 31.6 percent in 1975 compared with 1974 and decreased 30.8 percent in the first quarter of 1976 compared with the first quarter of 1975.

Sales of special items from the plant's Specialty Products Shop in terms of quantity decreased 15.9 percent in 1974 compared with 1973, decreased 48.9 percent in 1975 compared with 1974 and decreased 22.6 percent in the first quarter

of 1976 compared with the first quarter of 1975.

Sales of rail in terms of quantity from the plant's Bar Mill Division increased 120.9 percent in 1974 compared with 1973, increased 80.7 percent in 1975 compared with 1974 and increased 95.1 percent in the first quarter of 1976 compared with the first quarter of 1975.

Production of ingots, slabs, and blooms in terms of quantity in the plant's Steelmaking Division decreased 17.5 percent in 1974 compared with 1973, decreased 42.4 percent in 1975 compared with 1974 and decreased 17.4 percent in the first quarter of 1976 compared with the first quarter of 1975.

Production of sheet and strip in the plant's Strip Mill Division in terms of quantity increased 3.0 percent in 1974 compared with 1973, increased 55.9 percent in 1975 compared with 1974 and increased 30.7 percent in the first quarter of 1976 compared with the first quarter of 1975.

Production of structural shapes and pilings in the plant's Structural and Slabbing Mill Division in terms of quantity decreased 29.8 percent in 1974 compared with 1973, decreased 47.2 percent in 1975 compared with 1974 and decreased 82.0 percent in the first quarter of 1976 compared with the first quarter of 1975.

Production of bars in terms of quantity in the plant's Bar Mill Division decreased 7.9 percent in 1974 compared with 1973, decreased 33.5 percent in 1975 compared with 1974 and decreased 29.9 percent in the first quarter of 1976 compared with the first quarter of 1975.

Production of specialty items in terms of quantity in the plant's Specialty Products Shop decreased 19.9 percent in 1974 compared with 1973, decreased 50.6 percent in 1975 compared with 1974 and decreased 37.5 percent in the first quarter of 1976 compared with the first quarter of 1975.

Production of rail in terms of quantity in the Mills Bar Division increased 155.8 percent in 1974 compared with 1973, increased 98.4 percent in 1975 compared with 1974 and increased 81.0 percent in the first quarter of 1976 compared with the first quarter of 1975.

INCREASED IMPORTS

Carbon steel blooms, slabs and ingots are included in a category also including castings, billets and sheet bars. Imports of this category decreased 5.3 percent in 1972 compared with 1971, decreased 45.7 percent in 1973 compared with 1972, increased 40.0 percent in 1974 compared with 1973, increased 48.7 percent in 1975 compared with 1974 and decreased 43.6 percent in the first quarter of 1976 compared with the first quarter of 1975. The ratios of imports to domestic production and consumption increased from 0.10 percent for each in 1974 to 0.18 percent for each in 1975 and decreased from 0.22 percent for each in the first quarter of 1975 to 0.14 percent for each in the first quarter of 1976.

Imports of carbon steel sheet and strip decreased 9.7 percent in 1972 compared with 1971, decreased 15.8 percent in 1973 compared with 1972, decreased 3.1 percent in 1974 compared with 1973, decreased 23.3 percent in 1975 compared with 1974 and decreased 16.3 percent in the first quarter of 1976 compared with the first quarter of 1975. The ratios of imports to domestic shipments and consumption increased from 13.3 percent and 12.1 percent, respectively, in 1974 to 14.9 percent and 13.0 percent, respectively, in 1975 and decreased from 18.4 percent and 15.7 percent, respectively, in the first quarter of 1975 to 11.7 percent and 10.5 percent, respectively in the first quarter of 1976.

Imports of carbon steel structural shapes and piling increased 9.1 percent in 1972 compared with 1971, decreased 22.1 percent in 1973 compared with 1972, decreased 7.9 percent in 1974 compared with 1973, decreased 29.2 percent in 1975 compared with 1974 and increased 16.7 percent in the first half of 1976 compared with the first half of 1975. The ratio of imports to domestic shipments increased from 19.1 percent in 1974 to 19.2 percent in 1975 and the ratio of imports to domestic consumption decreased from 16.8 percent in 1974 to 16.6 percent in 1975. The ratios of imports to domestic shipments and consumption increased from 18.5 percent and 16.1 percent, respectively, in the first half of 1975 to 30.6 percent and 23.9 percent, respectively, in the first half of 1976.

Imports of bar increased 6.8 percent in 1972 compared with 1971, decreased 9.2 percent in 1973 compared with 1972, decreased 8.5 percent in 1974 compared with 1973, decreased 37.1 percent in 1975 compared with 1974 and decreased 60.5 percent in the first half of 1976 compared with the first half of 1975. The ratios of imports to domestic shipments and consumption decreased from 8.6 percent and 8.1 percent, respectively, in 1974 to 7.7 percent and 7.2 percent, respectively, in 1975 and decreased from 9.8 percent and 9.1 percent, respectively, in the first half of 1975 to 4.0 percent and 8.9 percent, respectively, in the first half of 1976.

Imports of steel rail increased 31.4 percent in 1972 compared with 1971, decreased 0.5 percent in 1973 compared with 1972, increased 26.1 percent in 1974 compared with 1973, increased 81.2 percent in 1975 compared with 1974 and decreased 77.0 percent in the first quarter of 1976 compared with the first quarter of 1975. The ratios of imports to domestic shipments and consumption increased from 5.4 percent and 5.6 percent, respectively, in 1974 to 7.7 percent and 8.0 percent, respectively, in 1975 and decreased from 6.6 percent and 6.5 percent, respectively, in the first quarter of 1975 to 1.4 percent and 1.5 percent, respectively, in the first quarter of 1976.

CONTRIBUTED IMPORTANTLY

Over 95 percent of the steel ingots, blooms and slabs of the plant's Steelmaking Division are consumed by Bethlehem Steel Corporation in the production of

steel products at either the Lackawanna plant or at other Bethlehem Steel Mills. Less than 5 percent of the Division's production represents sales to trade customers.

Carbon steel structural shapes and piling customers of the Mills Structural and Slabbing Division indicated that imports were an important factor in current procurement decisions. Some customers had shifted purchases of steel to foreign sources because of its lower price. All customers indicated that foreign structural steel and piling are readily available at cheaper prices than domestic steel and that the availability and use of this foreign steel together with the current slump in the construction industry were adversely affecting their businesses.

Carbon steel sheet and strip customers of the plant's Strip Mill Division were primarily engaged in the manufacture of automobiles and automobile component parts. Use of imported steel was minimal by these customers although domestic supply conditions in 1974, in which steel consumers were placed on allocation basis by the domestic steel industry, in some cases did affect steel purchase patterns in 1974 and somewhat in 1975. Fluctuations in purchases of sheet and strip were primarily in response to changes in sales and production in the auto industry. Purchases of sheet and strip were substantial in 1974 as the auto industry prospered but dropped sharply in 1975 as automobile sales and production fell. Purchases of sheet and strip have been increasing in 1976. The Department has not recommended a certification in any prior case involving carbon steel sheet and strip based on the facts and information presented.

The Lackawanna plant's Specialty Products Shop produces highway guard rail, guard rail material, corrugated roofing and a variety of shapes and products manufactured to customer specifications. These customers indicated that they had not shifted purchases to foreign sources. Purchases were influenced by domestic business conditions and in the case of guard rail and guard rail material were influenced by State and Federal specifications for the use of domestic product only.

CONCLUSION

After review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with carbon steel structural shapes and piling produced in the Mills Structural and Slabbing Division of the Lackawanna plant of Bethlehem Steel Corporation, located in Woodlawn, New York, contributed importantly to the total or partial separations of the workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Lackawanna plant of Bethlehem Steel Corporation, Woodlawn, New York, engaged in the production of carbon steel structural shapes and piling in the Mills Structural and Slabbing Division who

became totally or partially separated from employment on or after May 7, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

I further conclude that increases of imports like or directly competitive with steel ingots, blooms and slabs produced in the plant's Steelmaking Division, carbon steel sheet and strip produced in the plant's Strip Mill Division, bar and steel rail produced in the Mills Bar Division and special products produced in the plant's Specialty Products Shop did not contribute importantly to the total or partial separations of the workers at that plant.

Signed at Washington, D.C. this 20th day of September 1976.

JAMES D. HOOVER,
Acting Executive Assistant
to the Deputy Under Secretary.

[FR Doc. 76-28362 Filed 9-27-76; 8:45 am]

APPENDIX 5

United Steelworkers of America

Nov 19 11 37

AFL-CIO-CLC

815 16TH ST., N.W. WASHINGTON, D.C. 20006

Suite 706

Phone: (202) 638-6929

November 15, 1976

Mr. Marvin Fooks, Director
Office of Trade Adjustment Assistance
Department of Labor
Bureau of International Labor Affairs
3rd Street & Constitution Ave., N.W.
Washington, D. C. 20210

Re: TA-W-884 & TA-W-1006
USWA Local Unions 2601-2604 & 3144
Bethlehem Steel, Woodlawn, N.Y.

Dear Mr. Fooks:

The United Steelworkers of America on behalf of the petition in the above-cited case hereby requests review of the determination made by the Department of Labor on September 20, 1976.

While the DOL properly did certify a unit of production and the members employed therein, the petitioner contends among other that the DOL erred in unnecessarily restricting the scope of such certification.

The basis for such request for review is predicated on but not restricted to the following:

(1) The determination of September 20, 1976 should have included an evaluation of the impact of imports upon specialty products and bridge joists. If properly included, the product lines would have broadened the number of eligible workers in the affected departments. There is, therefore, a new class of affected workers who were not defined or included in the original determination.

(2) In its determination, DOL did not properly apportion the injury found to include adversely affected workers in the steelmaking, blast furnace, coke ovens, garage, narrow gauge, or auxiliary services departments who likewise were engaged in production of products affected by the impact of imports.

Mr. Marvin Fooks

November 15, 1976

Furthermore, a finding of injury in the above departments itemized in the preceding paragraph will change the ratio of the total ingot tonnage affected by the imported products, thereby creating a larger percentage of affected workers in the steelmaking facility.

(3) The implementation of the retroactive date of May 7, 1976 was improperly applied to exclude workers whose vacation period, although terminating prior to the impact period, did not require reporting for scheduled work until some time after the designated impact period. They, therefore, should be adjudged to have been unemployed at the time of their regular reporting period.

The United Steelworkers of America respectfully requests the DOL to review the instant case on the basis of the foregoing and other proper considerations which may be raised in the course of the investigation, including the convening of an informal hearing at the parties convenience, wherein the parties, including representatives of the employer, may explore, assess and discuss matters pertinent to this case.

Respectfully submitted, I am

Sincerely,

John L. Oshinski
John L. Oshinski
International Representative

JLO/pam

May 16, 1977

Mr. John Oshinski
International Representative
United Steelworkers of America
815 16th Street, N.W.
Washington, D.C. 20006

Dear Mr. Oshinski:

In a letter dated November 15, 1976 you requested the Department of Labor to reconsider decisions issued in cases TA-W-384 and TA-W-1006 involving employees of the Woodlawn, New York (Lackawana) plant of Bethlehem Steel.

Your letter raised three points as the basis for reconsideration;

- "(1) The determination of September 20, 1976 should have included an evaluation of the impact of imports upon specialty products and bridge joists. If properly included, the product lines would have broadened the number of eligible workers in the affected departments. There is, therefore, a new class of affected workers who were not defined or included in the original determination.
- "(2) In its determination, DOL did not properly apportion the injury found to include adversely affected workers in the steelmaking, blast furnish, coke ovens, garage, narrow gauge, or auxilliary services departments who likewise were engaged in production of products affected by the impact of imports.
- "(3) The implementation of the retroactive date of May 7, 1975, was improperly applied to exclude workers whose vacation period, although terminating prior to the impact period, did not require reporting for scheduled work until sometime after the designated impact period. They, therefore, should be adjudged to have been unemployed at the time of their regular reporting period."

Shortly after receiving your letter, the department agreed to a review. During the course of the review, the department met with you and other representatives of the USWA to respond to questions raised in your letter as well as the question of workers who exercised bumping privileges as provided for in the union contract.

Per the union contract, an employee was required to remain on layoff status for six months before exercising his "bumping" privileges. When an employee exercised bumping privileges, the employee bumped was determined not eligible to apply for trade adjustment assistance. The question raised by the USDA was whether the disqualification was consistent with the regulations and procedures issued by the Department of Labor.

With respect to point number one raised in your letter, the department's investigation revealed the Lackawana plant has not produced bridge joists or span joists since October 1974. Most customers of Bethlehem specialty products reported that they did not purchase imports and that purchases of such items increased or decreased according to the level of domestic highway construction or other economic factors not related to import competition.

Furthermore, joist workers laid off in October 1974 could not be extended coverage since the date of the petition filed is May 7, 1976. As you know, Section 223(b)(1) of the Trade Act limits coverage to separations occurring not more than one year from the date of the petition.

With regard to the second point raised in your letter, the investigation and this review affirms that employees not covered by the certification supported operations of the certified portion of the plant. Support personnel and employees in other divisions spent more than 85% of their time in 1975 and in the first quarter of 1976 in employment related to products other than steel structural shapes and pilings. Since the certified products made up a relatively small proportion of total plant output, and specific workers could not be identified in terms of the time actually employed in the support of production of certified products, the certification could not be generally extended to cover support personnel.

In response to the third point raised in your letter, The Trade Act of 1974 does not allow coverage of any worker whose last total or partial separation which occurred more than one year prior to the date of the petition. In this case, May 7, 1976. Any question as to whether individual employees of the plant were in "work status" on May 7, 1975 can be resolved by examining the employees pay record or by receiving an interpretation of "work status" from the state employment office. Finally, with regard to the bumping issue, this also involves the interpretation of "work status" and would have to be resolved by the state employment office.

I am sorry that facts were not developed that would have permitted us to modify the decisions or to otherwise respond to your request so as to improve the coverage of the decision issued.

Yours truly,

MARVIN M. FOOKS
Director, Office of
Trade Adjustment Assistance

MFooks/ca/5-16-77
cc: Mr. Fooks
Subject
Chron

